

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEVIN NEELEY,

Petitioner,

v.

JEFFREY A UTTECHT,

Respondent.

CASE NO. C19-5667RBL

ORDER

THIS MATTER is before the Court on Magistrate Judge Fricke's Report and Recommendation [Dkt. # 9], recommending that the Court deny Petitioner Neeley's § 2254 federal *habeas corpus* petition, without prejudice. The Court has also reviewed Neeley's Objections to that Report and Recommendation [Dkt. # [10].

(1) The Magistrate Judge's report and recommendation is approved and **ADOPTED**;

(2) The Court construes petitioner's "motion for reconsideration" [Dkt. # 8] as a response to the Court's order to show cause and directs the Clerk to **strike its designation as a motion on the docket**;

(3) Petitioner's federal habeas corpus petition [Dkt. # 6] is **DISMISSED without prejudice** for failure to exhaust state court remedies;

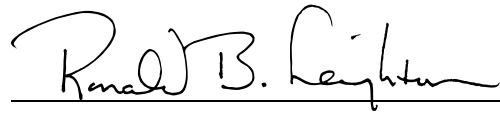
1 (4) The Court will **NOT** issue a certificate of appealability under 28 U.S.C. §2253 for the
2 reasons articulated in the Report and Recommendation;

3 (5) Petitioner Neeley's in forma pauperis status **SHALL CONTINUE** if he appeals; and,

4 (6) The Clerk is directed to close this case and to send copies of this Order to the parties and
5 to Magistrate Judge Theresa L. Fricke.

6 IT IS SO ORDERED.

7 Dated this 1st day of November, 2019.

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10 Ronald B. Leighton
11 United States District Judge
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